

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In The Matter Of:

**CATOM TRUCKING, INC.,
(U. S. DOT No. 315294)**

Petitioner

**Docket No. FMCSA-2009-0113
(Midwestern Service Center)**

DECISION ON PETITION FOR REVIEW OF SAFETY RATING

1. *Background*

This matter comes before the Federal Motor Carrier Safety Administration (FMCSA) on a March 3, 2009, petition by Catom Trucking, Inc. (Petitioner) for administrative review of a conditional safety rating pursuant to 49 CFR 385.15. The conditional rating was assigned following a compliance review of Petitioner completed on or about January 21, 2009. It became effective on or about April 3, 2009.¹

The procedures for assigning a safety rating at the conclusion of a compliance review are set out in Appendix B to part 385. As pertinent, ratings are assigned for each of six factors, if applicable. The ratings for these individual factors then determine a carrier's overall safety rating according to a Safety Rating Table.² The ratings for factors one through five are assigned based on violations of acute regulations and patterns of noncompliance with critical regulations.³ The rating for factor six, recordable accident

¹ The effective date of the rating is measured from the date the official rating notification is issued, which in this case was February 2, 2009, not from the date of the compliance review report. Thus, the effective date was April 3, 2009, not March 22, 2009, as asserted by Petitioner.

² Appendix B to 49 CFR part 385, section III A.(b).

³ These regulations are identified in Appendix B to 49 CFR part 385, section VII.

rate, is determined by the number of recordable crashes per million vehicle miles traveled by the carrier. An accident rate exceeding 1.5 crashes per million miles traveled will result in an unsatisfactory rating for the accident rating factor.⁴

Petitioner's recordable accident rate was 4.11 crashes per million miles traveled, based on six recordable accidents and 1,461,482 miles operated during the 12-month period preceding the compliance review. Consequently, Petitioner was assigned an unsatisfactory rating for the accident factor, resulting in an overall rating of conditional.⁵

Petitioner claims that its overall safety rating should be upgraded to satisfactory because: (1) four of the six charged accidents will have "aged off" its accident register prior to the effective date of the conditional rating; (2) an October 10, 2008, accident was not preventable and should be removed from the calculation of Petitioner's accident rate; (3) Petitioner has not had any recordable accidents since receiving notice of its conditional rating; and (4) Petitioner is a heavy equipment hauler operating primarily in urban areas, thus accounting for its relatively high number of recordable accidents.

2. Decision

Appendix B to Part 385 states that the rating for the accident factor will be determined based on the recordable accident for the 12 months prior to the compliance

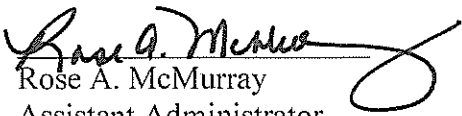
⁴ Appendix B to 49 CFR Part 385, section II B.(d). The unsatisfactory rating standard for urban carriers operating within a radius of 100 miles is 1.7 crashes per million miles traveled. Although Petitioner claims to be an urban carrier, the compliance review report indicates that all 10 of its drivers operate vehicles beyond a radius of 100 miles.

⁵ Under the Safety Rating Table (Appendix B to 49 CFR part 385, section III A.(b)), an unsatisfactory rating in any single rating factor will result in an overall conditional rating, if the carrier is rated conditional in two or fewer other factors. Petitioner received satisfactory ratings in all other rating factors.

review.⁶ Petitioner's Accident Register, attached as Exhibit B to its petition, indicates that all six accidents occurred between February 5, 2008, and October 10, 2008. The fact that four of these accidents occurred before the effective date of its conditional safety rating, and three occurred before the petition for review was filed, is irrelevant because the 12-month period used in calculating the accident rate is determined based on the date of the compliance review, not the date when the petition for review is filed or the rating becomes effective. Since Petitioner failed to allege that any of these four accidents were not preventable, they count as recordable accidents for purposes of calculating the accident factor rating.

Assuming, for the sake of argument, that the October 10, 2008, accident challenged by Petitioner was not preventable and thus excludable from the calculation of its accident rate, Petitioner's rating for the accident factor would still be unsatisfactory and its overall safety rating would still be conditional. Based on five recordable accidents, its accident rate would be 3.42 crashes per million miles traveled ($5 \times 1,000,000 / 1,461,482$). This exceeds the allowable accident standard for both urban and non-urban carriers.

Accordingly, *It Is Hereby Ordered*, the petition for administrative review filed by Catom Trucking, Inc., is denied. Its safety rating remains conditional.


Rose A. McMurray
Assistant Administrator
Federal Motor Carrier Safety Administration

5-5-05
Date

⁶ Appendix B to 49 CFR Part 385, sections II B.(a) and II B.(d).

CERTIFICATE OF SERVICE

This is to certify that on this 6 day of May, 2009, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

David L. LaPorte, Esq.
LaPorte & Associates, P.C.
P.O. Box 400
Flossmoor, IL 60422

One Copy
U.S. Mail

Peter W. Snyder, Esq.
Trial Attorney
Office of Chief Counsel (MC-CCE)
Federal Motor Carrier Safety Administration
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

One Copy
U.S. Mail

Darin G. Jones, Field Administrator
Midwestern Service Center
Federal Motor Carrier Safety Administration
19900 Governors Drive, Suite 210
Olympia Fields, IL 60461

One Copy
U.S. Mail

Steven M. Mattioli
Illinois Division Administrator
Federal Motor Carrier Safety Administration
3250 Executive Park Drive
Springfield, IL 62703-4514

One Copy
U.S. Mail

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue SE
Room W12-140
Washington, DC 20590

Original
Personal Delivery